

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 4104 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH**

and

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAJAJ ALLIANZ GENERAL INS. COMPANY LTD. - Appellant(s)**Versus****BELABEN @ BHUMIKABEN YATINKUMAR & 4 - Defendant(s)**

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Appearance :

MR PV NANAVATI for Appellant(s) : 1, MR VIBHUTI NANAVATI for Appellant(s) :

1,

None for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 14/12/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 18th July 2006 of the Motor Accident Claims Tribunal, Vadodara in MACP No.1470 of 2003 awarding compensation of Rs.3,91,200/- under Section 163-A of the Act to the widow, a minor son and the parents of one Yatinkumar Patel who died at the age of 26 years in

a motor vehicle accident.

2. At about 9.00 PM on 14.4.2003, when the deceased was driving the motor cycle insured by the appellant Insurance Company from Dabhoi to Sadhali, suddenly one pig dashed with the motor cycle. The deceased was, therefore, thrown off the motor cycle and fell on the road resulting into serious head injuries. The deceased was rushed to the hospital but succumbed to the injuries on 20.4.2004. The parents, widow and the minor son filed the claim petition under Section 163A of the Act.

3. The Insurance Company contested the claim petition mainly on the ground that the deceased himself was driving the motor cycle and, therefore, his heirs cannot claim compensation under Section 163A of the Act. Relying on the decision of this Court in *New India Assurance Co. Ltd. vs. Muna May Basant*, 2001 (1) GLR 915 = 2001 ACJ 940, the Tribunal negated that contention and passed the award in favour of the claimants for compensation of Rs.3.91.200/- after considering the income of the deceased from agricultural lands and after considering the age of the deceased.

4. The only contention raised in the appeal is that since the deceased himself was driving the vehicle (two-wheeler - scooter), the Insurance Company is not liable to pay compensation. It is vehemently submitted that the Insurance Company's liability to indemnify the insured can arise only when the owner is vicariously liable for the negligence of the driver and, therefore, the driver himself or his heirs can never claim compensation even in a petition under Section 163-A of the Act. It is also contended that in Section 163-A absence of provision similar to sub-section (4) of Section 140 and use of the word "victim" in sub-section (1) of Section 163-A support the Insurance Company's case.

5. In the first place, the liability of the insurer under Sections 140 and 163A of the Act is an independent statutory liability and not a common law tort liability. Liability of the owner/insurer to pay compensation under Section 163-A arises as soon as it is shown that death/injury resulted from an accident arising from the use of a motor vehicle. If the Insurance Company is permitted to disown its liability on the ground that the driver of the sole vehicle involved in the accident was at fault, that would run counter to the clear provisions of Section 163-A and the legislative scheme in introducing Section 163-A will be frustrated. The Legislature having specifically made the question of negligence irrelevant in a petition claiming compensation under Section 163A of the Act, it is not open to the owner/Insurance Company to dispute the liability to pay compensation by raising the plea about negligence of the driver of the vehicle.

6. This issue is no longer res integra. A three Judge Bench of the Apex Court in Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., 2004 (5) SCC 385 has in terms concluded the controversy in favour of the claimant/s in the following terms :-

39. Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself.

66. In Section 163A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163A would apply despite the contrary provisions existing in the said Act or in any other law for the time being in force. Section 163A of the Act covers cases where even negligence is on the part of a victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of."

(emphasis supplied)

7. With this authoritative pronouncement of the three Judge Bench of the Apex Court, no further debate is permissible. Apart from the fact that this view was earlier taken by this Court in *RV Chudasma vs. Hansrajbhai V Kodala*, 1999 (1) GLR 631 and *New India Assurance Co. Ltd. vs. Munna Maya Basant*, 2001 (1) GLR 915, this view was also taken by various other High Courts including Bombay High Court (*Latabai Bhagwan Kakade vs. Mohammad Ismail*, 2002 ACJ 407), a Full Bench of the Kerala High Court (*National Insurance Co. vs. Malathi*, 2005 II ACC 414) and Himachal Pradesh High Court (*Kokila Devi vs. Chet Ram*, 2002 ACJ 650).

8. A Full Bench of the Kerala High Court in **National Insurance Company Ltd v. Malathi C. Saliam**, II (2005) ACC 414 (FB), has enunciated the legal principle in the following terms:

"15. The liability to pay compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an inquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimants naturally the claimants will have to lead evidence which would defeat the object and purpose of Section 163-A. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or disablement occurred during the course of the user of the vehicle and the vehicle is insured the Insurance Company or the owner, as the case may be, shall be liable to pay the compensation. This is a statutory obligation. Claimant is, therefore, entitled to get legitimate amount on the basis of the structured formula based on the no fault theory from the Insurance Company or the owner or owners of the vehicle on the plea that the liability is joint and several.

16. Counsel for the Insurance Company also raised a contention that since Section 163-A is incorporated in Chapter XI with the heading "Insurance

of Motor Vehicles, against Third Party Risks" and driver-cum-owner is not a third party and hence if the death or permanent disablement has resulted due to his or her wrongful act or neglect or default claim is not maintainable. We find it difficult to accept this contention. The head of the Chapter was there even before the introduction of Section 163-A. The word "third party" has been defined as an inclusive definition under Clause (g) of Section 145. An inquiry as to whether tortfeasor is a third party, owner or driver does not arise when a claim is considered under Section 163-A. No fault liability under Section 163-A is one created by the statute falls outside the purview of tort, there being no necessity to enter into an inquiry as to who was the wrong-doer."

9. We respectfully agree with the above reasoning of the Full Bench of the Kerala High Court and adopt the same. Neither the Insurance Company nor the owner can wriggle out of their liability under section 163-A of the Act by alleging that the deceased/injured driver of the vehicle was at fault.

10. We may now deal with the argument based on sub-section (4) of section 140 and absence of such provision in section 163-A of the Act which had appealed to the Karnataka High Court in Appaji (since deceased) & Anr. vs. M Krishna & Anr. 2004 ACJ 1289.

(The Karnataka High Court rendered its decision on December 17, 2003 and obviously, therefore, it did not have the benefit of the decision of the Hon'ble Supreme Court in Deepal Girishbhai Soni's case rendered on March 18, 2004 - 2004 (5) SCC 385)

It is vehemently contended that if the Legislature intended to make the owner/insurer liable to pay compensation even to a negligent driver (in case of disablement and to his heirs in case of death) who was solely or partly responsible for causing accident resulting into the disablement or death, the Legislature

while inserting Section 163-A into the statute book would not have omitted to include a provision in Section 163-A similar to subsection (4) of section 140.

11. The answer to this argument requires not merely logic but also empathy, search for the legislative intent and a sense of history which is what purposive interpretation is all about.

12. The non obstante clause at the commencement of subsection (1) of section 163-A, makes the legislative intent most emphatic to give a complete go bye to the fault principle of tortious liability. When overwhelmingly large number of accidents take place on account of some error of some human being, the object of doing away with the fault principle is to remove the burden cast by the common law on the claimants for leading evidence on the question of negligence. The plight of innocent family members of an accident victim hunting for evidence to prove negligence with the help of absolute strangers in a by and large urban setting or on a deserted road not only introduces an element of uncertainty in the midst of certainty of miseries befalling on the bereaved family members of the bread winner, but it also delays the trial of the claim petition. All that the Legislature now wants the claimants to prove is -

- (i) death/disablement arising from the injuries received in an accident arising out of the use of the motor vehicle in question.
- (ii) age and income of the deceased in a fatal case.
or
- (ii) age, income, disability and actual expenses in an injury case.

While producing certificate of death/disablement and getting evidence like FIR and panchnama from the police for showing the accident and involvement of the vehicle in such accident would suffice to get a small amount of interim compensation under Section 140, the only further evidence that the claimant/s would need to get substantial compensation for loss of dependency benefit or loss of future income in an injury case under the structured formula in Section 163-A would be the evidence very much within their possession. The whole purpose of introducing the no fault liability is to remove a significant area of controversy and thereby to make the process of the claimants getting compensation for loss of dependency benefit (loss of future income in case of disablement) both certain and quicker.

13. Turning to Legislative history, after the Apex Court reiterated in *Minu B Mehta vs. BR Nayan* (1977) 2 SCC 441 the fault principle of tortious liability in motor vehicle accident cases, in *Bishan Devi vs. Sirbaksh Singh*, AIR 1979 SC 1862 and in the *Motor Owners' Insurance Co. Ltd. vs. Jadavaji K Modi*, 1981 (4) SCC 660, the Apex Court appealed to the Parliament to come out with no fault principle for awarding compensation in motor accident cases. The Parliament for the first time introduced that principle by inserting Section 92A in the Motor Vehicles Act, 1939 in the year 1984. Since it was a radical change introduced on the statute book for the first time, the Parliamentary draft-person not only provided for the no fault liability through sub-section (3) in Section 92A, but in order to remove all possible doubts also ex abundante cautela inserted sub-section (4) in Section 92A. The provisions of Section 140 in the 1988 Act are simply reproduction of the provisions of Section 92A in the 1939 Act. Sub-section (3) of Section 140 is the heart and soul of the no fault principle embodied in Section 140. Sub-section (4) is merely a clarificatory provision added out of abundant caution.

14. Since the compensation under Section 140 of the Act (Rs.50,000 in fatal cases and Rs.25,000 in permanent disablement cases) was too small and was interim in nature so that the family got a pittance during pendency of the claim petition, came in the realization of the need to provide for final compensation under a structured formula to families in lower economic strata where the annual income of the deceased/injured claimant is Rs.40,000/- or less. The extension of the no fault principle from interim compensation under Section 140 to final compensation under Section 163-A did not warrant or involve any modification in the scope or ambit of the no fault principle. Between 1984 and 1994, the concept of “no fault principle” as embodied in Section 140 got so well entrenched and understood that while inserting Section 163A in the year 1994, the Parliament did not find it necessary to reproduce the ex abundante cautela provisions of Section 140 into Section 163-A all over again and rested content with opening Section 163-A with a non obstante clause while providing for liability of the owner and insurer to pay compensation as per the structured formula in the case of death or permanent disablement due to accident arising out of use of the motor vehicle and verbatim reproducing sub-section (3) of Section 140 as sub-section (2) of Section 163A for dispensing with pleading or proof of any wrongful act or neglect or default of the owner/s of the vehicle/s concerned or of “any other person”. As indicated above, sub-section (4) of Section 140 was merely a clarificatory provision and, therefore, not making the same clarification in Section 163A, while extending the principle of no-fault liability to structured formula, does not whittle down the scope, ambit and efficacy of sub-sections (1) and (2) of Section 163A of the Act.

15. Seen in the above setting, it is not possible to accept the Insurance Company's contention that even after incorporating the

no fault principle or absolute liability in Sections 140 and 163-A, the Parliament intended to introduce in Section 163A the fault principle in case of a driver who, according to the opponent/s, drove the vehicle in a rash and negligent manner. Our analysis in the preceding paras clearly shows that the Parliament intended to exclude altogether inquiry into the question of negligence. Once you retain that inquiry in a case where the driver or his heirs are claimants, the whole gamut of inquiry will surface introducing the elements of delay and uncertainty which the Parliament intended to exclude. What the Parliament has specifically thrown out from the front door cannot be permitted to be reintroduced through the back door.

16. The tenacity and legal ingenuity of the counsel for the insurer would still want us to deal with the contention that since sub-section (1) of Section 163-A uses the word 'victim', the tortfeasor himself cannot be a claimant. Hence, the Section would not apply to a case where the claimant is an injured negligent driver or where the claimants are heirs of a negligent driver.

17. As already indicated in para 6 hereinabove, the principle laid down by the Apex Court in para 66 of the three Judge Bench decision in *Deepal Girishbhai Soni vs. United India Insurance Co. Ltd.*, 2004 (5) SCC 385 at page 407 (already quoted in para 6 hereinabove) has already concluded the controversy.

Section 163A provides for the liability of the owner/insurer of the vehicle "to pay in case of death or permanent disablement due to accident arising out of use of a motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be".

(emphasis supplied)

The Concise Oxford Dictionary of Current English,

Ninth Edition defines the words “accident” and “victim” as under:-

Accident -

- an event that is without apparent cause or is unexpected;
- an unfortunate event especially one causing physical harm or damage, brought about unintentionally;
- occurrence of things by chance

.....

(Middle English via Old French and Late Latin *accidens* from Latin *accidere* (as 'fall'))

Victim -

- a person injured or killed as a result of an event or circumstance (a road victim)
-”

It is also necessary to note that “victimise” as a verb has a different connotation altogether i.e. to single out a person for punishment or unfair treatment. While this verb involves an intention (and a negative one at that) - the word “victim” is being used to express sympathy (if not empathy) for the harm or damage suffered by a person without necessarily referring to any intention or fault on the part of any person, much less of that person.

The question of establishing fault of the driver or of any other person can arise only where an inquiry into the question of negligence is permitted. For the reasons already indicated above, the Parliament has entirely dispensed with any inquiry into the question of negligence. The Tribunal or this Court cannot, therefore, permit the opponents to demand any inquiry for showing that injured/deceased driver was negligent or for requiring the

claimant/s to prove that the injured/deceased driver was not negligent.

18. At the fag end of arguments, Mr Nanavati for the appellant - insurance company submitted that since the owner of the motor cycles in the two cases had not paid extra premium for covering the risk of the driver of the motor-cycle in question, the appellant-insurance company was not liable to pay even the compensation under Section 163A of the Act. The owner/driver of the vehicle was covered under the policy for personal accident cover of Rs.1 lakh on account of payment of premium of Rs.50/- and, therefore, there would be no liability to pay compensation under Section 163A of the Act.

19. This contention was not urged before the Tribunal and, therefore, cannot be allowed to be raised in this appeal. Even otherwise in view of our finding that the insurer's liability under Section 163A encompasses the liability to pay compensation on the basis of no fault principle even in case of a driver who is alleged to be responsible for causing the accident in question and that the liability under Section 163A is an independent statutory liability and is a social security scheme as held in Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., 2004 (5) SCC 385, the contention cannot be accepted.

20. In view of the above discussion, the appeal is summarily dismissed.

(M.S.SHAH, J.)

(AKIL KURESHI, J.)

(vjn) / sundar